IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11351 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

KAMLABEN ALIAS KALI D/O DHANJIBHAI VERMA - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

==========

Appearance :
MS DR KACHHAVAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR PD BHATE, AGP for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/09/2006

ORAL JUDGMENT

1. Police Commissioner, Ahmedabad passed an order on 02.05.2006, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA Act" for short), detaining the detenue under the provisions of the said Act.

2. The detaining authority took into consideration nine prohibition cases registered against the detenue. The detaining authority considered the activities of the detenue as that of a bootlegger as defined under PASA Act

and observed that the detenue is required to be immediately prevented from pursuing her activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Learned Advocate appearing for the petitioner has restricted his arguments to the ground that so far as the offences are concerned, they relate to bootlegging and there is no disturbance to public order. He submitted that the petition may, therefore, be allowed.

4. Mr. P.D Bhate, learned Assistant Government Pleader, has opposed this petition.

5. So far as the offences are concerned, they all relate to prohibition cases and in light of the decision recorded by Division Bench of this Court in Letters Patent Appeal No.223 of 2000 dated 22nd August 2000, in absence of any contemporaneous material, the satisfaction recording damage to public health and disturbance to public order cannot be considered as genuine. The satisfaction, therefore, for exercise of powers under the PASA Act for detaining cannot be considered as genuine

and cannot be upheld.

6. In the result, the petition is allowed. The impugned order of detention dated 02.05.06, passed against the detenue, is hereby quashed. The detenue is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

7. Direct service permitted.

(K.S. JHAVERI, J.)

Divya//